

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BESSEMER SYSTEM FEDERAL CREDIT)
UNION,)
Plaintiff,)
vs.) Case No. 2:19-cv-00624-RJC
FISERV SOLUTIONS, LLC, f/k/a FISERV)
SOLUTIONS, INC., and FISERV, INC.,)
Defendants.)

BESSEMER'S PORTION OF JOINT STATUS REPORT

Plaintiff Bessemer System Federal Credit Union (“Bessemer”) submits its portion of the joint status report pursuant to the Court’s Order of April 27, 2022. (Dkt. 183.)

Defense counsel did not schedule a meet and confer in response to several requests from Bessemer, and the parties remain at an impasse regarding the form and contents of the joint status report as of the close of business today. *See Exhibit A and Exhibit B*, email chains between counsel.

Accordingly, Bessemer sets forth its portion of the status report below and provides Defendants with an opportunity to submit its position separately.

Special Master

After the Court’s April 27, 2022 order, the parties mutually agreed by email on Carole Katz to serve as the special master. Ms. Katz, however, declined the engagement based on her availability. Unfortunately, the parties were unable to meet and confer regarding an alternate special master to oversee discovery in this action.

Plaintiff respectfully requests that the Court select one of the following to serve as special master, all of whom are on the WDPA’s approved list of special masters, have appropriate subject matter expertise, and have been proposed to Defendants’ counsel:

1. **Mark Willard, Esq.** – Mr. Willard is one of the approved Special Masters on the Western District of Pennsylvania’s list of approved special discovery masters. Mr. Willard’s practice has a particular emphasis on the discovery of electronically stored information, and has spoken annual at e-discovery symposiums and is a published author on electronic discovery. *See* <https://www.eckertseamans.com/our-people/mark-a-willard>.

2. **Daniel B. Garrie, Esq.** - Mr. Garrie is one of the approved Special Masters on the Western District of Pennsylvania's list of approved special discovery masters. Mr. Garrie has extensive experience serving as a special master, has a national reputation for handling technological issues, and has authored over 200 legal and technical articles and publications that have been cited in over 500 articles, publications, and opinions. Mr. Garrie is also the founder and executive managing partner of a technical consulting practice focusing on forensics and e-discovery. *See <https://www.jamsadr.com/garrie/>.*

As to Fiserv's proposed special master candidates, Bessemer previously declined to accept Mr. White (ECF No. 132) because his expertise in banking is not relevant because Bessemer is not a bank, but a federal credit union – a not-for-profit, consumer-owned cooperative regulated by the National Credit Union Administration and subject to different regulatory rules and oversight than a bank. Fiserv's other proposed candidate, Ms. Tuite, is not on the Court's approved list of Special Masters. Further, her professional focus on defending employment lawsuits would not facilitate the resolution of the claims in this action.

With respect to the portion of the Court's April 27th Order that requested that the parties inform the Court as to whether any of the currently outstanding discovery disputes have been resolved, the parties have been unable to reach any resolution, and no meet and confer has occurred regarding these issues or the selection of a special master. On April 28, 2022, Plaintiff's counsel wrote to Defendants' counsel advising that attorneys from the National Credit Union Administration (NCUA) had requested a telephone conference with counsel for both parties to consider the government's views with respect to Fiserv's motions. Having received no response from Defendants' counsel, Plaintiff's counsel followed up again on May 2, 2022 requesting for counsel to provide availability for a telephone conference with NCUA. Defendants' counsel advised that he would provide a response "at the end of the week or Monday."

Counsel for Fiserv has declined Bessemer's and the NCUA's continued offer to meet and confer to narrow the outstanding discovery disputes, as well as to discuss the NCUA's position letter. Based on an email from yesterday, defense counsel seemed to condition a meet and confer on whether "Bessemer has a proposal to resolve one or more of the pending discovery disputes" and that "if Bessemer's position has not changed, we do not believe a call between the parties would be productive." Defendants have not met and conferred with Plaintiff or the NCUA, including with respect to Defendants' proposed special master candidates.

The meet and confer required by the Court's Order did not occur, and the parties have not resolved the currently outstanding discovery disputes.

Given Defendants' refusal to schedule a meet and confer with respect to its proposed special master candidates, Bessemer requests that Defendants be deemed to have waived its special master selections, and Bessemer respects that one of its candidates be chosen.

Dated: May 11, 2022

Respectfully submitted,

/s/ Charles J. Nerko
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